

**COURT OF APPEALS  
DECISION  
DATED AND RELEASED**

July 27, 1995

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 95-0733-FT

STATE OF WISCONSIN

IN COURT OF APPEALS  
DISTRICT IV

ELIZABETH ANN MASSEY,  
TERRY NODOLF, DON NODOLF,  
and ROBERT NODOLF,

Plaintiffs-Appellants,

v.

DENNIS A. CARROLL,

Defendant-Respondent,

UNITED METHODIST CHURCH,  
CONGREGATIONAL CHURCH,

Defendants,

HARTFORD CITY LIBRARY,

Defendant-Respondent,

WASHINGTON COUNTY HUMANE SOCIETY,  
FIRST PRESBYTERIAN CHURCH,  
HARTFORD MEMORIAL HOSPITAL, INC.,

Defendants,

**HARTFORD RESCUE SQUAD,  
CEDAR LAKE HOME,**

**Defendants-Respondents,**

**AMERICAN LEGION AUXILIARY  
c/o HILDA MAAS,**

**Defendant,**

**THEODORE LUDEMANN,**

**Defendant-Respondent,**

**MRS. ALPHA BRADY, JESSE BYTELL,  
IRENE MUNDL, BARBARA MCGEOUGH,  
MARY SADDLER, LEONARD SADDLER,  
ILA LUDEMANN WEBER, BEN MUNDL,  
ARNO MORTON and DAVID MORTON,**

**Defendants.**

APPEAL from an order of the circuit court for Dodge County:  
JOHN R. STORCK, Judge. *Affirmed.*

Before Gartzke, P.J., Dykman and Sundby, JJ.

PER CURIAM. Elizabeth Ann Massey, Terry Nodolf, Don Nodolf, and Robert Nodolf appeal from an order admitting Florence Nodolf's 1977 will to probate. The issue is whether Florence breached a contract not to revoke the 1966 joint will that she executed with her deceased husband, Clement Nodolf. Because no evidence exists that a contract not to revoke ever existed, we affirm.<sup>1</sup>

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<sup>1</sup> This is an expedited appeal under RULE 809.17, STATS.

The 1966 will provided that Clement and Florence "mutually covenant and agree, each in consideration of the promise and act of the other" to dispose of their property as declared in the will. Under its terms, the surviving spouse received the deceased spouse's property, and Florence agreed to leave all her property to Clement's children by a previous marriage if she were the survivor. Clement died in 1975. Florence executed a new will in 1977, leaving fifty percent of her property to Clement's children, and fifty percent to various other beneficiaries. After Florence died in 1993, the appellants, Clement's daughter and his son's children, sought enforcement of the 1966 will. This appeal ensues from the trial court's adverse decision on that issue.

Section 853.13(2), STATS., removes any presumption that the testators of a joint will have contracted not to revoke it. A joint will may therefore be revoked by one of the testators unless provisions of the will sufficiently state a contract not to revoke it, the will refers to a separate contract, or clear and convincing evidence of a contract not to revoke exists apart from the will. Here, although the language of the 1966 will establishes a contract for a joint will, it does not state nor refer to a contract not to revoke the will. Nor have the appellants offered any other evidence that Florence and Clement intended that the 1966 will not be revocable. Therefore, no breach occurred when Florence revoked the will after Clement's death.

*By the Court.* – Order affirmed.

This opinion will not be published. See RULE 809.23(1)(b)5, STATS.